

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35682

STATE OF IDAHO,)	2009 Unpublished Opinion No. 528
)	
Plaintiff-Respondent,)	Filed: July 14, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
ANTHONY FRANKLIN GONZALEZ,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Minidoka County. Hon. R. Barry Wood, District Judge.

Order revoking probation and ordering modified sentence into execution, affirmed.

Molly J. Huskey, State Appellate Public Defender; Sarah E. Tompkins, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before LANSING, Chief Judge, GUTIERREZ, Judge
and GRATTON, Judge

PER CURIAM

Anthony Franklin Gonzalez was charged with injury to a jail, I.C. § 18-7018, and pursuant to a plea agreement, pled guilty to the charge and the state agreed to a sentencing recommendation. Gonzalez absconded and failed to appear for his sentencing hearing and was later arrested. The district court sentenced Gonzalez to a unified term of five years, with two years determinate and retained jurisdiction. After Gonzalez completed his rider, the district court suspended his sentence and placed him on probation for three years. Gonzalez subsequently violated the terms of his probation and the district court revoked his probation, but reinstated his probation for three years. Gonzalez again violated the terms of his probation and the district court revoked his probation and ordered the underlying sentence into execution, but *sua sponte*

reduced the underlying sentence to a unified term of five years with one year determinate. Gonzalez appeals from the revocation of his probation and the execution of his modified sentence, contending that the district court abused its discretion by revoking his probation.

It is within the trial court's discretion to revoke probation if any of the terms and conditions of the probation have been violated. I.C. §§ 19-2603, 20-222; *State v. Beckett*, 122 Idaho 324, 325, 834 P.2d 326, 327 (Ct. App. 1992); *State v. Adams*, 115 Idaho 1053, 1054, 772 P.2d 260, 261 (Ct. App. 1989); *State v. Hass*, 114 Idaho 554, 558, 758 P.2d 713, 717 (Ct. App. 1988). In determining whether to revoke probation a court must examine whether the probation is achieving the goal of rehabilitation and consistent with the protection of society. *State v. Upton*, 127 Idaho 274, 275, 899 P.2d 984, 985 (Ct. App. 1995); *Beckett*, 122 Idaho at 325, 834 P.2d at 327; *Hass*, 114 Idaho at 558, 758 P.2d at 717. The court may, after a probation violation has been established, order that the suspended sentence be executed or, in the alternative, the court is authorized under Idaho Criminal Rule 35 to reduce the sentence. *Beckett*, 122 Idaho at 326, 834 P.2d at 328; *State v. Marks*, 116 Idaho 976, 977, 783 P.2d 315, 316 (Ct. App. 1989). A decision to revoke probation will be disturbed on appeal only upon a showing that the trial court abused its discretion. *Beckett*, 122 Idaho at 326, 834 P.2d at 328.

Applying the foregoing standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion by revoking probation and ordering execution of Gonzalez's modified sentence. Therefore, the order revoking probation and directing execution of Gonzalez's modified sentence is affirmed.